

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

FREDERICK WAYNE SMITH,

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 1:22-cv-01580 JLT SAB (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT, AND DISMISSING THE
ACTION WITHOUT PREJUDICE**

(Docs. 28, 39)

Frederick Wayne Smith seeks to hold R. Rodriguez—the sole remaining defendant—liable for retaliation, deliberate indifference to safety, and denial of access to the courts. (*See* Doc. 16.) Defendant seeks summary judgment, asserting Plaintiff did not exhaust available administrative remedies. (Doc. 28.)

The magistrate judge observed, “Defendant has submitted undisputed evidence that an administrative procedure process was available to Plaintiff.” (Doc. 39 at 6.) The magistrate judge determined it was “undisputed that Plaintiff failed to put the institution or CDCR on notice that Plaintiff claimed retaliation, deliberate indifference, or denial of access to the courts by Defendant Rodriguez or anyone else.” (*Id.* at 6-7.) Therefore, the magistrate judge found “Plaintiff failed to exhaust available administrative remedies available to him before filing his lawsuit.” (*Id.* at 7.) The magistrate judge recommended the motion for summary judgment be granted, and the claims be dismissed without prejudice. (*Id.*)

1 The Court served the Findings and Recommendations on all parties and notified Plaintiff
2 any objections were due within 14 days. (Doc. 39 at 7.) The Court advised him that the “failure
3 to file objections within the specified time may result in the waiver of rights on appeal.” (*Id.*,
4 citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did not file
5 objections, and the time to do so has passed.

6 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a de novo review of this case.
7 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations
8 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 9 1. The Findings and Recommendations dated January 10, 2024 (Doc. 39) are
10 **ADOPTED**.
- 11 2. Defendants motion for summary judgment (Doc. 28) is **GRANTED**.
- 12 3. The action is **DISMISSED**, without prejudice, for failure to exhaust administrative
13 remedies.
- 14 4. The Clerk of Court is directed to close this case.

15
16 IT IS SO ORDERED.

17 Dated: **February 8, 2024**


UNITED STATES DISTRICT JUDGE